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ARGUMENT OF JOSEPH M. MORRISON BEFORE THE

Sub-Committee of the Committee on Foreign Affairs of the House of Representatives on the Japanese Indemnity Fund, favoring the return of the remainder of the Fund to the Japanese Government, delivered March 19th, 1878.

Mr. Chairman, and Gentlemen of the Committee:

The question of ownership with reference to the sum exacted by the United States Government, in conjunction with other powers, from the Japanese, in the year 1864, having been a subject of controversy from that time until the present, and the almost universal feeling throughout this country being favorable to its return to Japan, it is desirable that the matter should be disposed of at an early day.

Either this money belongs to the United States, or it belongs to Japan.

I will endeavor, in the course of my remarks, to explain some of the reasons which induced the United States Government to accept the custody of this fund, and also, to show why it should be returned to the rightful owners.

Prior to the year 1866 our relations with Japan were based upon two treaties—one dated in 1854, and the other in 1858.

These treaties were signed by the Tycoon on the part of Japan.

The ablest writers upon international law uniformly assert that an international treaty, to be valid, must be concurred in by the highest authority in each of the countries concerned, and receive the signature of the supreme ruler of each nation. Was the Tycoon the highest authority, or supreme ruler, of Japan? All authorities contradict this assumption, and define the duties of the Tycoon to be those of executive to the Mikado. The latter was, and is, the recognized head of the Empire throughout its whole extent, while the former was always regarded as his subordinate. Indeed, we find the American minister, on several occasions, suggesting to the Tycoon the necessity of the sanction of the Mikado to the treaties, and at last insisting that this be secured. In a letter of April 30th, 1863, Minister Pruyn wrote to Secretary Seward: (1) "The Tycoon is outranked by at least four personages in this empire;" and again, June 27th, 1863: (2) "I am satisfied the public mind in this country will not be quieted until the treaties are ratified by the Mikado. Until this is done, the position of foreigners must continue precarious, and their presence occasion intrigues, and perhaps civil war, because not sanctioned by the rightful sovereign, which the Mikado doubtless is, theoretically and practically." In a letter from the Daimios to the Tycoon, which will be found on page 1111, part 2, of the Diplomatic Correspondence for 1863, they wrote as follows: "You are better

(1) Diplomatic Correspondence, 1863, part 2, page 1075, par. 7.
(2) " " " " " 1125, No. 45.

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aware than we that power proceeds from the Tenshi, (Mikado,) who has distributed it among the great families of Japan. This is a divine order established by the Kamis, and he who wishes to change it pretends to be wiser than the heavens. If you, however, absolutely wish to imitate foreigners you must consult with our sovereign, who is above everybody, and the supreme chief, as is also the case with foreign nations."

Secretary Seward, in writing to Minister Pruyn under date of December 17, 1863, (nine months before the Shimonoseki affair) uses the following language: (1) "The more you enable us to understand the constitution of the government and of society in Japan the more weight the President inclines to give to your suggestion, that as soon as practicable the Western powers ought to take measures to have the treaties they have already made with the Tycoon ratified and confirmed by the Mikado." And in 1866 Mr. Portman (then U. S. minister in Japan) in announcing the accomplishment of this result, writes: (2) "The treaties, as well as the acts of the Tycoon's government in pursuance thereof, have now become legalized." And again: "I believe I am not too sanguine when venturing to submit it as my opinion, that the formal sanction of the treaties by the Mikado, recognized by all Japanese as the real sovereign of their country, will prove an important result of the recent negotiations." The British minister in Japan, in a letter to Earl Russell, dated August 25th, 1864, speaks of the Mikado as the "titular and only acknowledged sovereign."

If by the signature of the Mikado, the "*real sovereign*," the treaties became "legalized," it follows as a natural consequence that, prior to that time, they were not legal, and could not be held as binding upon the Mikado, or upon the people of Japan.

The fact that foreign nations wished to consider the Tycoon the treaty-making power is no argument to sustain the validity of any treaty signed by him.

The unauthorized innovation of the time-honored customs of the nation perpetrated by the Tycoon, in opening the country to foreign intercourse, was felt to be an assumption of authority which could not be overlooked, and aroused the enmity of many of the most powerful Daimios and of the Mikado, who adopted measures to embarrass the fulfillment of the obligations under which the Tycoon had placed himself.

That the infringement of the provisions of these treaties by the Mikado, prior to his signing them in 1866, was a violation of international law cannot be claimed, for the reason stated before, that he, the supreme ruler of the Empire, had not given his sanction thereto, and could not be bound by the independent action of a subordinate in such a matter.

The sum in controversy is our pro rata of \$3,000,000 received from the government of Japan under the provisions of a convention signed by the representatives of Great Britain, France, the United States, the Netherlands, and of the government of the Tycoon. For our share we received \$786,125.87.

The first serious demonstration against the opening of Japan to foreign intercourse occurred in the month of June, 1863, when two vessels belonging to the Prince of Chosin, a very wealthy and powerful Daimio,

(1) Dip. Cor. 1864-'65, pt. 3, page 589, par. 4.
(2) " " 1866, " 2, " 191 " 4.

whose territory bordered upon the north side of the Straits of Shimonoseki, fired upon the American merchant steamer Pembroke, while she lay at anchor in these straits.

Shortly afterwards a French, and a Dutch, vessel were fired upon at the same passage, but premonitory signal shots were fired in every case, which were not heeded. These acts, the Prince subsequently claimed, were in obedience to an order from the Mikado. The order referred to required that all intercourse with foreigners should cease. As there was no intercourse between the inhabitants of the Prince's dominions and foreigners, the order was practically inoperative as regarded him, and his construction of it was a most remarkable one. The fact that none of the other Daimios found in it a sanction for such demonstrations, and that he alone interpreted it to demand hostile action, is sufficient evidence of his erroneous or wilful misconstruction.

In the attack on the Pembroke no loss or injury was sustained, and she proceeded on her voyage through the Bungo channel.

(1) On learning of this outrage the American minister notified the government of the Tycoon of the fact, and also that he would demand full indemnity therefor.

He at once consulted with Commander McDougal, of the United States steamer Wyoming, then at that station, and it was decided to proceed immediately to the Straits of Shimonoseki and retaliate upon the hostile prince.

The work of retaliation was most complete, as the official reports show that one vessel was blown up, another sunk, and a third badly damaged, while the loss of life must have been very great, forty being reported killed by the explosion alone. The loss of the Wyoming was four killed, and seven wounded.

The value of the two vessels destroyed was stated at \$135,000. The damage to the bark was probably as great as that sustained by the Wyoming.

Thus our national honor was restored to its purity, and a very severe loss inflicted upon the Prince.

This action was taken before an opportunity had been given the Japanese Government to redress the wrong, and by thus ignoring the authorities the United States Government deprived itself of the right to demand indemnity for any damages received as the result of that precipitate action. It should have given the Japanese Government an opportunity to administer chastisement, and if they failed in making reparation it would then have been time to proceed to extreme measures. By the action of Commander McDougal, sanctioned by the American Minister, the Prince of Nagato was recognized as a sovereign, responsible for his own acts, thereby relieving the Japanese Government from all liability, in law or equity, for damages sustained by the United States. The American Minister recognized this fact in writing to Secretary Seward on the 28th of November, 1863, as follows:

(2) "The President will see in this offer of the Government additional and conclusive proof that in sending the Wyoming to Shimonoseki hostilities were not commenced against the Tycoon, but only against a rebel to his authority, as well as one I rightfully regarded as an outlaw."

(1) Dip. Cor., 1863, part 2, page 1129, No. 48.

(2) Dip. Cor., 1864-'65, part 3, bottom of page 459.

Mr. Pruyn appears to have desired it to be particularly understood that the action of the Wyoming was in nowise directed against the Japanese Government, but only against an outlaw for whose acts no government could be held responsible; for in a letter of March 17, 1864, to Secretary Seward, he reiterates this view in the following words: (1) "Nagato's position of outlawry is sufficient, if any doubt could have existed, to demonstrate the wisdom of sending the Wyoming against him." His view was sustained by our Government, and in the list of claims forwarded to Mr. Pruyn by Secretary Seward, by direction of the President, (and which will be found on page 592 of part 3, Dip. Cor., 1864-'65,) no claim for damages incurred by the Wyoming is mentioned.

That the act of Commander McDougal was one of extraordinary bravery cannot be denied, but the recognition of the gallantry of our naval corps has never been deemed a part of the duty of any other nation.

The bill of the owners of the Pembroke for damages was as follows:

(2) "Statement of loss sustained in consequence of a murderous assault made upon the steamer Pembroke, in the Inland Sea, on the 19th of June, by armed vessels flying the flag of the Government of Japan:

Loss of time by being obliged to go through an unknown and circuitous passage to reach the open sea, five days, at \$300.....	\$1,500
Loss of freight and passengers through not being able to visit Nagasaki, whither the vessel was bound; estimated at.....	6,500
Consideration to be distributed among the officers and crew as recompense for the deadly peril to which they were subjected..	2,000
Total.....	\$10,000

"SHANGHAI, July 4, 1863."

When urging the claim of the Pembroke the Minister also presented the case of the Wyoming, but the Government of the Tycoon, while admitting the justice of the indemnity for the Pembroke, and promising its payment, suggested that the loss inflicted by the Wyoming might very properly offset that she had received, the justice of which being apparent the subject was not again referred to.

It is reasonable to suppose that while reclamation was exacted for every injury done to Americans in Japan, if the claim for injuries sustained by the Wyoming, or for prize money for the officers and crew, had been deemed just and equitable, it would have been insisted upon until paid. But we find the American Minister writing to Secretary Seward under date of August 10, 1864, as follows:

(3) "I returned to this place on the 5th instant, after a visit of three weeks to the city of Yedo, having succeeded in securing the settlement of the claims which I had been instructed to demand of this Government. The Government placed in my hands a letter drawn by myself, in which they said that they directed the Governor of Kanagawa, on the 5th of September, to pay me the sum of \$12,000, principal and interest of the Pembroke claim.—Some months before I had notified them I should expect interest, thinking it would hasten the payment of the

(1) Dip. Cor., 1864-'65, part 3, page 486, No. 23.

(2) Dip. Cor., 1863, part 2, page 1138.

(3) Dip. Cor., 1864-'65 part 3, page 535, No. 52.

principal sum.—The owners of the Pembroke will have received a very large indemnity in view of the small loss they sustained, and they neither applied for, nor expected, interest; nor did I ask for it on their behalf, but only to accelerate the payment of the principal."

In a letter dated August 8th, 1864, addressed to Captain Price, of the United States ship Jamestown, thanking him for the guard furnished during his stay at Yedo, he says :

(1) "The Japanese government have arranged, to my satisfaction, the claims which I had been instructed by the President of the United States to make upon it."

Here we find that *all claims* of the United States against Japan prior to the date of these letters were *satisfactorily settled*.

Not only all claims as defined by the minister, but all claims which the President of the United States had demanded. He also received the \$2,000 excess on the Pembroke claim, and it was applied to the expenses of the legation. What more could we ask ?

The Japanese had shown a desire to fulfil every obligation, and had satisfied every demand made upon them by our Government. Hence, if we fail to make restitution of what came to us wrongfully we will be exposed to the imputation that subsequent claims were predicated upon the alacrity with which former ones were complied with, and upon our ability to enforce our demands. It appears from a letter written by the American minister to the Secretary of State, under date of February 29, 1864, that there were really two sides to the question of reclamations, although the side in favor of the Japanese was entirely ignored by the treaty powers. In that letter he wrote :

(2) "The claims for injuries on citizens of the United States at this place are attended with embarrassments it will be exceedingly difficult to overcome. There have been, unfortunately, *very many instances where Japanese have been grossly maltreated by foreigners and no indemnity asked or paid*. Indeed, it admits of some question whether it would be safe, in view of the character of the floating population of the treaty powers at the open ports, to establish the principle of the liability of a government for the act of its individual citizens or subjects."

All through the early intercourse between the United States and Japan there is an apparent partiality in favor of this country above all others, which aggravates the subsequent action in exacting the Shimonoseki indemnity. In the very letter in which the attack on the Pembroke is recited, Minister Pruyn says :

(3) "I still believe that the feelings of this government and people towards the Government and people of the United States are decidedly friendly ; but recent occurrences have proved what I predicted, that any discrimination is practically impossible ; we are foreigners, and must share the common fate."

In another letter, dated August 10th, 1864, speaking of his visit to

(1) Dip. Cor., 1864 and 1865, part 3, page 541.

(2) Dip. Cor., 1864 and 1865, part 3, page 485.

(3) Dip. Cor., 1863, part 2, page 1135.

Yedo, he mentions, with very apparent satisfaction, that (1) "the most peaceful revolution has taken place which has marked the history of this government." Many officials hostile to foreigners had been removed, and their places filled with supporters of the Tycoon's liberal foreign policy. The populace also were very friendly, and Mr. Pruyn moved about in the worst quarters of the city without molestation.

A few days after this Mr. Pruyn joined the ministers of Great Britain, France, and the Netherlands in arranging a crusade against the Prince of Chosin, for the purpose of opening the Straits of Simonoeski to the passage of foreign vessels.

Having about a year previously received instructions to act in concert with the ministers of the other treaty powers, in what was deemed necessary to the interests of all, or any of them, which orders had not been recalled, Mr. Pruyn was placed in a peculiar position, pledging him to hostile action when no cause existed for such action. Hence, when the British minister urged him to join in the expedition, and represented that his failure to do so might lead to the inference that the treaty powers were not in accord, and that the moral effect of the presence of the American flag was absolutely necessary, Mr. Pruyn was constrained to charter a small merchant vessel, and mount a gun upon her, to represent the Government of the United States. He was the more readily persuaded to adopt this course, as our complications at home would not admit of a sufficient naval force being kept in Japanese waters to insure safety to American residents, and it was therefore essential that the treaty powers should remain in harmony, and more especially that America should not repudiate the action of the other powers, as will be seen by a reference to the Diplomatic Correspondence of 1864 and '65, part 3, page 545, par. 7.

Contrary to the expressed wish of the Tycoon's government, this hostile fleet sailed for Simonoseki with the object before stated. The fleet consisted of seventeen vessels, of which number but one carried the American flag, and that one was merely sent that the United States might be represented, and the officer in command of her was so instructed.

Arriving at the straits, the squadron made thorough work of the destruction of the batteries, carried away all the guns, and compelled the Prince to sue for peace. During the engagement, the American representative in the fleet was not injured in the least; not a man was hurt; and not a shot struck the ship, but she received on board twenty-three of the wounded of the British squadron.

From this it would appear that, although the American commander expended some powder, he was enabled to keep out of range of the batteries while doing so. After completing the work of destruction, the fleet returned to Yokohama.

The purpose of this expedition was stated to be the opening of the straits to the passage of foreign vessels. The right of foreign vessels to navigate this passage, against the wish of the Japanese government, cannot be sustained in law or equity.

The inland sea of Japan (of which the Strait of Simonoeski is the western outlet) is a narrow body of water having several openings into the adjacent sea, none of which are six miles in width, and is entirely enclosed by Ja-

(1) Dip. Cor., 1864 and 1865, part 3, page 534.

panese territory. It is an axiom of international law, that the maritime territory of a State extends (1) "to the distance of a maritime league along all the coasts," and also "to the straits and sounds bounded on both sides by the territory of the same State, so narrow as to be commanded by cannon-shot from both shores, and communicating from one sea to another."

Puffendorf says: (2) "Gulfs and channels, or arms of the sea, are, according to the regular course, supposed to belong to the people with whose land they are enclosed."

From "Twiss on Peace" I extract the following: (3) "If a sea is entirely enclosed by the territory of a nation, and has no other communication with the ocean than by a channel of which that nation may take possession, it appears that such a sea is no less capable of being occupied and becoming property than the land, and it ought to follow the fate of the country that surrounds it."—"So, likewise straits, which serve as a communication between two seas, and of which the shores on both sides are the territory of one and the same nation, are capable of being reduced into the possession of that nation."—"Whenever a nation has the exclusive right over an entire sea, or over a bay, or over straits, no other nation can claim a right of navigation therein against its will."—"The exclusive right which the Ottoman Porte exercises over the straits, and the intermediate sea, which connect the Mediterranean with the Black Sea, rests upon a prescription which has obtained the formal sanction of the great powers of Europe."—"The right of the Porte had a lawful origin at the time when the shores of the Black Sea were in the exclusive possession of the Ottomans, but after Russia had made large territorial acquisitions on its shores, the latter power, under the common law of European nations, had a right to navigate the waters of the Black Sea, and to pass outwards with trading vessels into the Mediterranean. But the Ottoman Porte did not at that time acknowledge any public law in common with the Christian powers of Europe, and the latter powers had not the right, if they had possessed the might, to impose their system of law upon the Ottoman nation."

Here we have sufficient authority to substantiate our claim, even if the position of the sea of Marmora (the connecting link between the Black Sea and the Mediterranean) and that of the Inland Sea of Japan were identical, but the advantage is most decidedly in favor of the latter; for while the only outlet for commerce from the Black Sea is through the sea of Marmora, the Inland Sea was not the thoroughfare for the passage of vessels between the ocean and the sea connected by its waters. There were two passages—one to the north, and the other to the south of this sea—both of which were as free to the navigation of vessels of all nations as the ocean itself. The claim that the passage through the Inland Sea was free by right of usage, will not bear the test of a comparison with international precedents. No provision was made in any of the treaties for the opening of this sea to navigation by foreign vessels, nor against their being excluded from its waters.

The statement that any international law at that time existing, which subverted their right to the exclusive jurisdiction over the Island Sea,

(1) Dana's "Wheaton," page 270.

(2) Puffendorf's "Law of Nature and Nations," L. 4, c. 5, § 8.

(3) Travers' Twiss "Peace," 250, 251, 260, & 261.

was binding upon the Japanese, is an assumption unwarranted by the rules of equity, and in contravention of authorities. They having, for two hundred years, been entirely isolated from the rest of the world, were ignorant of the laws which governed international intercourse, and acknowledged obedience to none but their own. We then "had not the right if we had possessed the might" to force them to accept our construction of law. The only ground left upon which to base a claim for compensation is the service rendered to the Government; and as it was claimed to be inimical to its interests, and was in direct opposition to the expressed wish of the Tycoon, it is difficult to sustain this position.

Upon the return of the fleet the representatives of the four treaty powers met in convention and drew up the following document, which was submitted for the action of the Japanese Government:

CONVENTION.

(1) "The representatives of the United States of America, Great Britain, France, and the Netherlands, in view of the hostile acts of Mori Daizen, Prince of Nagato and Suwo, which were assuming such formidable proportions as to make it difficult for the Tycoon faithfully to perform the treaties, having been obliged to send their combined forces to the Straits of Shimonoseki in order to destroy the batteries erected by that Daimio for the destruction of foreign vessels and the obstruction of trade; and the Government of the Tycoon, on whom devolved the duty of chastising this rebellious prince, being held responsible for any damage resulting to the interests of the treaty powers, as well as the expenses occasioned by the expedition, the undersigned representatives of the treaty powers, and Sakai Hida-No-Kami, a member of the Second Council, invested with plenipotentiary powers by the Tycoon of Japan, animated with a desire to put an end to all reclamations concerning the acts of aggression and hostility committed by the said Mori Daizen since the first of these acts in June, 1863, against the flags of divers treaty powers, and at the same time to regulate definitely the question of indemnities of war, of whatever kind, in respect to the allied expedition to Shimonoseki, have agreed and determined upon the four articles following:

ARTICLE I.

The amount payable to the four powers is fixed at \$3,000,000. This sum is to include all claims, of whatever nature, for past aggressions on the part of the Prince of Nagato, whether indemnities, ransom for Shimonoseki, or expenses entailed by the operations of the allied squadrons.

ARTICLE II.

The whole sum to be payable quarterly in installments of one-sixth, or \$500,000, to begin from the date when the representatives of the said powers shall make known to the Tycoon's Government the ratification of this convention and the instructions of their respective Governments.

ARTICLE III.

Inasmuch as the receipt of money has never been the object of said powers, but the establishment of better relations with Japan, and the desire to place these on a more satisfactory, and mutually advantageous

(1) Dip. Cor., 1864-'65, part 3, page 583.

footing, is still the leading object in view; therefore, if His Majesty, the Tycoon, wishes to offer, in lieu of the payment of the sum claimed, and as a material compensation for loss and injury sustained, the opening of Shimonoseki, or some other eligible port in the Inland Sea, it shall be at the option of the said foreign governments to accept the same, or insist on the payment of the indemnity in money under the conditions above stipulated.

ARTICLE IV.

This convention to be formally ratified by the Tycoon's Government within fifteen days from the date hereof.

In token of which the respective plenipotentiaries have signed and sealed this convention in quintuplicate, with English and Japanese versions, whereof the English shall be considered the original.

Done at Yokohama this 22nd day of October, 1864, corresponding to the twenty-second day of the ninth month of the first year of Genji.

(Signed) SAKAI HIDA-No-KAMI, [Jap. seal.]

RUTHERFORD ALCOCK,

*Her Britannic Majesty's Envoy Extraordinary and Minister
Plenipotentiary in Japan.*

LEON ROCHEs,

*Minister Plenipotentiarie de La Majestie l'Empereur des
Francais en Japan.*

ROBERT H. PRUYN,

Minister Resident of the United States in Japan.

D. DEGRAEFF VON POLSBROEK,

His Netherland Majesty's Consul Gen'l and Political Agent in Japan."

We must not for a moment lose sight of the fact that the provisions of this convention were framed to cover the cases presented by the *four treaty powers*, and not with a view singly to *American* interests.

Observe the remarkable verbiage of the preamble to this document. It is first stated that the hostile acts of the Prince of Nagato were becoming so formidable as to make it difficult for the Tycoon faithfully to observe the treaties, and, further, that it was the duty of the Tycoon to chastise the Prince for his rebellious acts. That he was responsible for damages to the interests of the treaty powers, and for the expenses of the hostile expedition of those powers.

Here they wished to lead to the inference that the obstruction of the Strait was a violation of the treaties. Even were we to admit that the treaties were legally binding upon the supreme government of Japan (which I do not) there was no clause in any of those treaties providing for the opening of the Inland Sea, or any of its outlets, to foreign commerce. They announce it to be the duty of the Tycoon to administer chastisement, at the same time admitting his inability to do so, and hold him responsible for damages to the interests of foreign powers, resulting from the closing of the straits, and the "stoppage of trade." As there was no open port in the Inland Sea, and as the highways of commerce were not in the least obstructed, it is difficult to perceive wherein the interests of the treaty powers could have been damaged, or the reported "stoppage of trade" had any foundation, even in the vivid imaginations of the draughtsmen of this inge-

nious convention. But the audacity of the assertion that the Tycoon is responsible for the expenses of the expedition against the Prince is beyond comparison. Just prior to the sailing of the fleet the Tycoon sent ambassadors to the ministers of the foreign powers to implore them not to resort to hostile measures, as he feared such action would render it impossible for him to carry out the obligations into which he had entered in his treaties, and would precipitate a general uprising against foreigners; but if they would wait until the present crisis was passed he hoped quiet would be restored, and he would be enabled to reduce the Prince to submission.

In the face of this protest the squadron sailed, thus forcing the alternative of regarding the Prince as a pirate and an outlaw, or of their having committed an overt act against the government of Japan, which latter would have abrogated even the slender treaties then existing.

Again, they say:

"Animated with a desire to put an end to all reclamations concerning the acts of aggression and hostility committed by said Mori Daizen, since the first of these acts in June, 1863, against the flags of *divers treaty powers*."

It should be borne in mind that the assault on the Pembroke was the first of the series, and the only one made upon an American vessel, excepting the attack upon the Wyoming when she went on her voyage of retaliation, and as those had been arranged satisfactorily, and all claims which were made against the Japanese government by the President of the United States, up to the time of the departure of the expedition against Chosin, were settled prior to that time, therefore no reference could have been intended, as far as the United States was concerned, to any reclamation, except for damages incurred as the result of that expedition.

That no indemnities were contemplated except for expenses occasioned by the dispatch of the Allied expedition is amply proven by reference to the memorandum of the ministers of foreign powers, dated August 25th, 1864, article second, which will be found on page 550 of part 3, Diplomatic Correspondence of that year, where it is expressly mentioned that the commandant of the expedition be requested to obtain, "in connection with the government of the Tycoon, an indemnity from the Prince of Nagato to cover the expenses occasioned to their respective governments by the expedition now to be dispatched against his batteries."

This view is substantiated in the letter of the American minister announcing the return of a portion of the fleet where, in speaking of what he expected to accomplish upon the return of the remainder of the fleet, he mentions as the third item (1) "the payment by the Tycoon of the expenses of the expedition in behalf of Chosin, or the opening of a port at Simonoseki."

The next clause of the preamble to the convention reads, "and at the same time to regulate definitely the question of *indemnities of war, of whatever kind, in respect to the Allied expedition to Shimonoseki*," &c. This expressly specifies that *the only indemnities* to be paid from this sum are for damages incurred by the *Allied squadron* on *that occasion*. And here, again, we are too liable to lose sight of the part taken by the other powers, and viewing only the result as referring to the United States, to argue that, as we suffered no loss at that time, it must refer to the case of the Wyoming.

(1) Dip. Cor., 1864, pt. 3, page 553.

We should remember that, although our chartered vessel was not damaged at all, and not a single man on board of her received even a scratch, she took on board upwards of twenty of the wounded of the British squadron, showing that the Government of Great Britain had some reason to provide for indemnities "in respect to the Allied expedition." The French, and the Netherlanders, also suffered severely, and might be pardoned for putting in this plea. The American minister, in writing to Secretary Seward, in a letter of October 29th, 1864, of the increase from \$2,000,000 to \$3,000,000, says he assented to it the more readily because he (1) "thought it more likely to lead to the substitution of a port as a *material compensation for the expenses of the expedition;*" thus showing beyond peradventure that, as far as the United States was concerned that was the only *indemnity* intended to be provided for.

Now let us scan the articles of the convention:

Article first begins: "The amount payable to the four powers is fixed at \$3,000,000." In his letter of transmittal with this document the American Minister wrote: (2) "The British Minister and myself, prior to meeting the Japanese Commissioners, had agreed on \$2,000,000 as the sum to be paid, and would have had no difficulty in its division among the powers interested; but some difference was suggested as likely to arise from the consideration whether the moral support afforded was not entitled to weight in such adjustment, and I did not feel that it was incumbent on me to interpose any objection to this view, as the moral support afforded by the United States was considerably in excess of the material support I was enabled to give." In other words, after estimating the indemnities, expenses, &c., of the expedition, the round sum of \$2,000,000 was decided as amply sufficient to fully indemnify all parties for losses, for expenses of the expedition, and for pensions; but in this case it was found that the United States would only receive the expenses of the chartered vessel, and the \$640 fired away by Ensign Pearson, as no damage had been sustained by men, or vessel, and it was then suggested, as a salve for the wounded sensibilities of America's representatives, that it would be just as easy to get \$3,000,000 as \$2,000,000, and that, really, the moral weight of the assistance rendered by the United States in providing a socket for its flagstaff was of vast account, and should be handsomely rewarded; so another million was added, which made it possible to divide the amount equally between the four powers, and at the same time cover the expenses and damages of the heaviest sufferer, thus leaving no ground for complaint. That it resulted from an entire misconception of the facts, is the only explanation I can find for the action of our Government in accepting, from a friendly power \$786,000 as recompense for its "moral support" in a hostile demonstration undertaken in violation of the expressed wish of that power, and directed against an acknowledged "pirate" and "outlaw."

This has never been the intention of the Government, nor the desire of the people, of the "asylum for the oppressed."

The next clause of article first reads: "This sum to include all claims, of whatever nature, for past aggressions on the part of the Prince of Nagato, whether indemnities, ransom for Shimonoseki, or expenses entailed by the operations of the allied squadrons." Here we must recall that, whatever may have been the outstanding claims of other powers, those

(1) Dip. Cor., 1864 & '65, part 3, page 582, § 4.

(2) Dip. Cor., 1864-'65, part 3, page 582, § 4.

of the United States, prior to the departure of the allied expedition, were all adjusted, and the indemnities were expressly specified to be "in respect to the allied expedition to Shimonoseki." How any claim could equitably be made for a "ransom for Shimonoseki" is utterly incomprehensible.

The object of the expedition was stated to be "the opening of the Straits to the passage of foreign vessels," and Shimonoseki was not named in the treaties with the Tycoon as one of the ports to be opened to foreigners. If reference is intended to the forbearance of the allies in not destroying the town when it was in their power, the demand is unworthy of consideration. That the expenses of the expedition should be borne by the Japanese Government, is equally repugnant to all sense of justice. How many such claims would our government have allowed to foreign powers, had they elected to send expeditions against the Southern States during the rebellion, and then presented claims for exemplary damages and expenses? Yet this Daimio was, at the time, in open rebellion against the Government, and the Tycoon had confessed his inability to subdue him.

The second section merely provides for the payment of the indemnity in quarterly installments of \$500,000 each.

The third section of the convention discloses the whole plot, and shows the real object of those who drew up the document. "Inasmuch as the receipt of money has never been the object of the said powers, but the establishment of better relations with Japan, and the desire to place them on a more satisfactory, and mutually advantageous footing, is still the leading object in view, therefore, if his Majesty, the Tycoon, wishes to offer in lieu of the payment of the sum claimed, and as a material compensation for loss and injury sustained, the opening of Shimonoseki, or some other eligible port in the Inland Sea, it shall be at the option of the said foreign Governments to accept the same, or insist on the payment of the indemnity in money under the conditions above stipulated."

Here the declaration is made, that the object of the treaty powers was not to obtain money; then one of the reasons for making such an exorbitant demand must have been, to force the acceptance of the alternative; as the ministerial councillors knew they had so impressed the Japanese with the power of their combined resources that they would not dare to entirely disregard their wishes. That such an impression of the ability of the treaty powers to enforce any demand they might choose to present, was believed, by the ministers of those powers, months before the affair at Simonoseki, to have been created in the minds of all Japanese, is indicated by the expression of the American Minister in a letter to Secretary Seward, dated March 17th, 1864, and reciting the action of the Wyoming, where he says, (1) "And I may remark that no occurrence has made such a deep and favorable impression on this government. If one vessel could accomplish so much, how can we possibly resist the Navies of America and Europe, is the natural question; and the number of those who judge successful resistance possible must be small, if indeed any prince can be found so arrogant and ignorant." The alternative of opening another port was deemed by the Tycoon impracticable, as he stated to the Ministers it would precipitate a civil war, and he was, consequently, compelled to agree to pay the money.

(1) Dip. Cor. 1864 and 1865, pt. 3, page 486, No. 23, par. 5.

Notwithstanding the avowal that money was a secondary consideration, these powers, when, two years later, and two years in advance of the time agreed upon, the Japanese opened two additional ports, neither offered to refund the money that had been paid them, nor to remit the payment of any part of the balance. The mode adopted for "establishing more friendly relations with Japan," was certainly a novel one.

It has been argued that our merchants suffered loss by the closing of the Straits of Simonoseki, because it prevented the shipment of cargoes to points in the East which would have been sent had not this obstruction existed. The fallacy, and absurdity, of this argument is shown at once: for the only obstruction being to the passage of that one Strait; the route to and from the United States and the East not being through that Strait; and there being no port in Japan open to foreigners which was approached through that channel; the assumption is without foundation. And even if there had been open ports within the Inland Sea, there are three other passages between it and the ocean all of which were unobstructed.

A parallel has been drawn between this case and that of the pirate "Alabama," and the proposition advanced that, if we refund this money to Japan, we would be bound in honor to return to the British Government any residue of the Geneva award. This overstrained comparison is amazing. The acts of the Prince of Chosin were confined to preventing vessels passing through the Straits of Simonoseki.

No incursions were made by him upon commerce, and it was well known to all interested that no attack need be apprehended from him anywhere upon the high seas. Hence his action could not, by any possibility, have deterred the shipment of a single dollar's worth of merchandise. On the other hand, the acts of the Alabama rendered the navigation of the ocean by our merchant vessels extremely dangerous. As she roamed over the entire ocean preying upon our commerce, merchants feared to trust to the chance of a safe passage, and hence the equity of the claim for *consequential* damages.

The value of the property destroyed by the Alabama is, however, largely in excess of the amount awarded for damages. Besides, the settlement in the one case was effected through the officers of a disinterested power untrammeled by the menace of a powerful alliance, while in the other a weak Government, divided by internal dissensions, overawed by the magnitude of the powers with which it was striving to obtain an equitable adjustment of the differences which had arisen between them, and recognizing its inability to successfully resist their demands, saw no alternative but to accept the least objectionable of the propositions submitted by them.

The sum received from England is an *award* to a single nation, based upon sworn statements of losses sustained, after the exclusion of all claims for damages from the interruption of trade and commerce, which claims were founded upon actual facts. That received from Japan is the result of a *united demand* made by four of the most powerful nations on the globe, based upon an imaginary grievance, without regard to damages incurred, and enormously in excess of every claim which has ever been, or which can be, brought against it with the slightest semblance of justice.

The whole matter may be summed up as follows:

The assault on the Pembroke, without previous notice of the closing of

the Straits, was an outrage for which the owners of the vessel were paid every dollar they claimed, receiving \$10,000 when no actual injury was sustained; the United States received \$2,000 for negotiating the claim, and, in retaliation for the insult to the flag, inflicted a very severe loss upon the offenders.

Prior to the departure of the Allied squadron on its errand of destruction all claims of the United States against the Government of Japan had been settled.

The action of the ministers in dispatching this squadron with the object specified was without authority, against the wishes of the Tycoon, and entirely unwarranted by the circumstances.

The vessel chartered to represent the United States in the squadron received no injury, and not one of her crew was either killed or wounded.

The articles of convention expressly specify that the only indemnities provided for are for losses and injuries sustained in the action of the *Allied squadrons*, and expenses of that expedition, and as the United States sustained no "loss or injury" in that expedition, this Government received \$786,125.87 for expenses incurred, and "moral support," when the actual expenses were, for charter of vessel \$9,500, for coal \$1,848, and for ammunition \$640; making a total of \$11,988, and placing to the credit of "moral support" the sum of \$774,137.87.

The sum total of all claims for indemnities, and for prize-money for the officers and crews of the Wyoming and the Takiang, computed according to the laws of the United States governing such matters, is set down at \$125,000. Even if these claims should be admitted to be just there would still remain in the hands of the United States Government nearly \$650,000 of the principal, together with the accrued interest.

The whole sum was invested in United States bonds, which were placed in the hands of the Secretary of State, and the money went into circulation, the same as that of any other purchaser of like securities.

The verdict of the American people has always been in favor of returning this ill-gotten treasure, and bills have, at different times, passed both houses of Congress providing for its return to the Japanese Government. No country on the globe can retain \$774,000 exacted from a weak nation in the hour of its distress, for "moral support," in an action like the one at Simonoseki, and maintain its right to the title "the enemy of oppression, and the asylum of the oppressed."

The question of returning the interest which has accumulated admits of no discussion. This money having come into our possession wrongfully, and having been invested in our securities, we stand in the same position toward the Japanese Government as toward any other purchaser of our bonds. The money itself was applied in paying our indebtedness; the compounding of the interest was merely investing the amount in bonds in place of drawing the money from the Treasury, and was the duty of the Secretary while he remained the custodian of the fund. The Japanese Government having borrowed from England, at the rate of ten per cent. interest per annum, to pay the United States Government this money, it would not be equitable, in returning the principal, to retain the earnings which had accumulated. It would merely cover the stain without effacing it.

That the return of this money would be a reflection upon those who ratified the treaty on the part of the United States is a false assumption,

for the Hon. William H. Seward, then Secretary of State, frankly admits the injustice of its retention in a letter dated January, 8, 1868, addressed to the Hon. N. P. Banks, Chairman Committee on Foreign Affairs, House of Representatives, which reads as follows:

(1) "DEPARTMENT OF STATE,
"WASHINGTON, January 8, 1868.

"SIR: I have the honor to inform you that, pursuant to the stipulations of the treaty with Japan of the 22d of October, 1864, to which the United States was a party, this Government has received from the Japanese government, without substantial equivalent, as its share of the indemnity stipulated to be paid by that treaty, the sum of six hundred thousand dollars in gold. This amount has been invested in United States registered bonds, and awaits such disposition as Congress may direct.

"I have the honor to be, sir, your obedient servant,
"WILLIAM H. SEWARD.

"Hon. N. P. BANKS,
"Chairman of the Committee on Foreign Affairs,
"House of Representatives."

It will be seen by the statement of the Secretary that he includes the interest, for at that time there had been but about \$375,000 paid by the Japanese government, while he gives the amount received, "*without substantial equivalent*," as \$600,000 in gold, thus including the earnings of the principal. What better authority could be asked that the Premier, to whom all the minor details of the negotiations were communicated; who was familiar with the previous relations of the two countries; and from whom the President and the Senate received the information upon which was based the ratification of the treaty.

Both the President, and Congress were, at the time, overwhelmed with matters of great national importance in connection with the war which had been raging for three years in our own country, and could only observe that American interests were protected by the treaty, without inquiring specifically into the means by which this result was secured. So little was known in this country of what was transpiring in Japan, that the action of our authorities was mainly a reflection of the views of our able Secretary of State, who appreciated the importance of maintaining the harmony then existing between the treaty powers, and, as no apportionment of the indemnity was provided for in the treaty, he could not decline to advocate its ratification, and relied upon the proverbial justice of the American people to repay what was received "*without substantial equivalent*."

Aside from the sentiment of justice, which demands the return of this money, the effect of such a vindication of the principles of equity upon which our Government is conducted, would be to turn the tide of popular feeling in Japan so strongly towards the United States, and increase the demand for American products and manufactures to such an extent, that the benefits which would accrue to this country would make its return the most profitable investment ever made by our people.

A comparison of our annual exports to Japan for the past ten years will prove the correctness of this position. The figures given were furnished

(1) Ex. Doc. No. 93, H. R., 2d session, 40th Congress.

ished by the Bureau of Statistics of the Treasury Department. During the year 1868, the value of our exports to Japan aggregated \$780,168; in 1871 it was \$987,675, being an increase of but \$207,507, in three years.

The next year, 1872, the Japanese Embassy which visited this country was cordially welcomed, and the House of Representatives passed a bill remitting the unpaid half of the indemnity. Relying upon the good faith of the American people in fulfilling the representations made by them, the Japanese turned toward the United States with hearts full of friendship, burying the past in oblivion, and rejoicing that they had, at last, found a people upon whom they could rely for justice in all their dealings; and in that year our exports to that country reached the sum of \$4,362,289, being an increase of \$3,374,614, or *four hundred and fifty per cent.* in one year.

In the following year, 1873, they increased to \$7,664,058, almost double those of the previous year.

Mark the effect of the demand for the remainder of the indemnity, which was made in the summer of 1874, in consequence of the failure of the Senate to act on the bill passed by the House. In that year our exports to Japan fell to \$1,808,107, a falling off of \$5,875,951, or more than *four hundred per cent.* The decrease continued during the two succeeding years; the exports for 1875 being \$1,647,197 and for 1876 \$1,098,457.

In the summer of 1876 the Senate passed a bill providing for the return of the indemnity, and as a result our exports to Japan were more than doubled in the following year, 1877, reaching \$2,539,641. The reaction was not so great as the impetus given in 1872, for the reason that the former professions and promises had proven a hollow mockery, and the Japanese, while they were willing to show their appreciation of a returning sensibility of our injustice toward them, accepted with caution promises of restitution without a guarantee of their fulfillment.

It is devoutly to be hoped that the rendition of full and complete justice to this deeply wronged people may be no longer delayed, and that America may remove the stain now marring the purity of her escutcheon by returning to its rightful owners the principal and interest of the "Japanese Indemnity Fund."

One argument advanced during the debate in the Senate in 1876 against the payment of interest in returning this fund was that this Government never pays interest on claims. Passing by the discussion of the correctness of this assertion as entirely irrelevant I challenge the comparison between this indemnity and a claim. Webster defines a claim as a "*demand as of right.*" The return of this "*indemnity fund*" is not *demanded* by the Japanese Government, nor by any representative, or agent, of that Government. It is a free-will offering of the American people in reparation of a wrong, inadvertently, and unintentionally committed, and which violates the high principles of justice, and equity, upon which the very foundation of our Government rests. While I am enabled authoritatively to state that the exaction of this tribute money is regarded by the Japanese nation as a gross injustice, and that its return would be accepted by them as a vindication of our oft-repeated expressions of friendship, and of the just and amitive policy which has always characterized our intercourse with foreign nations, and which is the proud boast of every true American, I can also say, that the Japanese Government has never applied for the return of this money, nor authorized any

application looking to that end, relying solely upon the honor of Americans to repair the wrong by which they came into possession of this large sum of money.

I appear before you, not as the agent, or attorney, of the Japanese Government, nor by the advice, or at the request of that Government, or its representative, for I have never addressed to, or received from, the Government of Japan, or any representative of that Government, any communication, written or verbal, in regard to this matter, but I present myself, as an American citizen, to urge upon your honorable body, as the representatives of the people, the adoption of such measures as may be necessary to give expression to the desire of the citizens of this great and benignant nation, that this fund should be returned to the Japanese Government, and believing that House bill No. 2,847, introduced by Mr. Schleicher on the 28th of January last, will meet the views of all friends of justice and right, and recognizing the necessity for prompt action in order that the ends of justice may not be delayed, as they have been in the past, by the failure, from lack of time prior to the end of the session, to secure concurrent action in both houses of Congress, I respectfully pray that immediate steps may be taken with a view to the prompt passage of that bill, with such modifications as your honorable committee may deem most expedient.

JOS. M. MORRISON.

WASHINGTON, *March 19, 1878.*



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